

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY LEBLANC,

Plaintiff,

v.

NICHOLAS SCHABERG,

Defendant.

Case No. 15-cv-12640
Honorable Laurie J. Michelson

**OPINION AND ORDER DENYING PLAINTIFF'S APPLICATION FOR LEAVE TO
PROCEED WIHTOUT PREPAYMENT OF THE FILING FEE
AND DISMISSING THE COMPLAINT**

Plaintiff Jeffrey LeBlanc, a Michigan state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983 and an application to proceed without prepayment of fees or costs. 28 U.S.C. § 1915(a)(1). Plaintiff names Magistrate Judge Nicholas Schaberg, a Kalamzoo-based state judge, as defendant. The Court will deny Plaintiff's application to proceed without prepayment of fees or costs and dismiss the Complaint.

Under the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321(1996), a prisoner is prevented from proceeding in forma pauperis in a civil action under certain circumstances. The statute states, in relevant part:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section, if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

42 U.S.C. § 1915(g). The "three strikes" provision allows the Court to dismiss a case where the prisoner seeks to proceed in forma pauperis if, on three or more previous occasions, a federal

court has dismissed the prisoner's action because it was frivolous, malicious, or failed to state a claim for which relief may be granted. 28 U.S.C. § 1915(g); *Thaddeus-X v. Blatter*, 175 F. 3d 378, 400 (6th Cir. 1999); *Witzke v. Hiller*, 966 F. Supp. 538, 540 (E.D. Mich. 1997). A plaintiff may proceed on an action subject to dismissal under the three strikes rule if he alleges that he is in imminent danger of serious physical injury. *See Clemons v. Young*, 240 F. Supp. 2d 639, 641 (E.D. Mich. 2003). A federal district court may sua sponte raise the three strikes provision of the PLRA on its own initiative. *Witzke*, 966 F. Supp. at 539.

Plaintiff has filed at least three prior civil rights complaints which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. *See, e.g., Leblanc v. Erdos*, No. 15-cv-12641, 2015 U.S. Dist. LEXIS 108376, at *2–4 (E.D. Mich. Aug. 18, 2015) (listing five prior strikes, and ten lawsuits that were summarily dismissed under the “three strike” rule). Moreover, Plaintiff's complaint asserts that Defendant held fraudulent pretrial hearings that ultimately led to his unjust incarceration. These allegations do not imply that Plaintiff is in imminent danger. The Complaint is therefore subject to dismissal under the three-strikes provision.

Accordingly, the Court DENIES Plaintiff's application for leave to proceed without prepayment of the filing fee. Additionally, the Court DISMISSES the complaint pursuant to 28 U.S.C. § 1915(g). This dismissal is without prejudice to Plaintiff filing a new complaint with payment of the filing fee.

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Dated: October 19, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on October 19, 2015.

s/Jane Johnson
Case Manager to
Honorable Laurie J. Michelson